

1893-020 Chancery Causes: Alexander Clifton vs. Adm. of Ezekial L. Lunsford  
Lee Co.

Slump, Martin, Fleenor, Patrick, Russell

CA-Debt  
T-Property

-Ded



Virginia.

To the honorable H. S. K. Morrison Judge of  
the Circuit Court of Lee County Virginia.  
Your orator, Alexander Clifton, humbly complain-  
ing would respectfully represent and shew unto  
your honor, that on or about the 20th day of  
January 1891, Frick Co, sold to Ezekiel Lunsford,  
J. B. Dimley, M. L. Lunsford, Silas Griffin & R. A.  
Dimley of said County, a Steam engine, Saw  
mill and fixtures therewith, at the price of  
\$1736.00, and to secure the payment of said  
purchase money, took from the said purchasers,  
and Caleb Dimley, a deed of trust on the said  
Engine, Saw mill & fixtures, and on the lands of  
said purchasers <sup>& said Caleb Dimley</sup> which deed of trust was recorded  
in the Clerk's office of the County Court of said  
County, Jan'y 22nd 1891. A copy of which is herewith  
filed marked "A". After said purchase and exe-  
cution of said deed of trust and on or about  
the day of 1891, the said Ezekiel Luns-  
ford departed this life intestate, and M. L. Lunsf-  
ord was appointed and qualified as his Admr.  
and afterwards, to wit, on the 8th day of April 1891,  
the said Frick Co for reasons to your orator unk-  
nown, took from the said Silas Griffin & wife,  
J. B. Dimley & wife & Caleb Dimley & wife another  
deed of trust on the said Engine, Saw mill and  
fixtures, and on their real estate, to secure the  
same debt mentioned in <sup>the said</sup> first deed of trust.



In each of said deeds of trust J. R. McDowell was made Trustee, and the last deed of trust was recorded in said Clerk's office on the day of April 1891. A copy thereof is herewith filed marked "B". On the 23rd day of June 1891, the said M. L. Slump as Admr. of the said Ezekiel Lumsford decd, proceeded to sell to the highest bidder, on twelve months credit, the interest of the said Lumsford in said Engine, Saw mill & fixtures, the said interest being one fifth thereof, and at this sale your orator, through his agent, W. D. Martin, became the purchaser of said interest at the price of \$305.00, to be paid twelve months after date, and he, together with said Martin as his security, executed to said Admr. their note for said sum. At this sale the said Administrator sold a one fifth interest in said property, and no announcement was made giving notice of a lien upon said property, or that the purchaser would purchase at his own risk, or subject to said lien, but upon the contrary there was nothing said about said lien, and the Admr. proposed to sell and did sell, a one fifth interest in said property, and this is what your orator purchased, as is shown by the note executed therefor. A copy of which note is herewith filed as part hereof marked "C". And your orator is advised that the law will imply a warranty



when a sale is made in that way and under such circumstances. Your orator soon learned that there was a lien for purchase money on said property in favor of Frick Co, but supposed that the original purchasers would pay this, and on the 6th day of January 1892 he sold said interest to one A. L. Russell for \$3000 less than he agreed to pay for it.

Thus matters went on until on the 30 day of January 1893, the said Admr instituted suit in your honor's Court on the law side thereof, on said note, and your orator, not denying the debt, and supposing that the encumbrance or lien on said property would be paid and removed, Confessed Judgment in the clerk's office in said suit <sup>on the 6th day of January 1893,</sup> with stay of execution until March 15th 1893. on the 30th day of Jan'y 1893.

On the 20th day of February 1893, the said McDowell Trustee &c, by virtue of said deeds of trust, at the front door of the Court house of said County, sold said property, including the interest your orator had purchased for the sum of \$5000, leaving about \$600- of the original purchase money yet unsatisfied to said Frick Co, and thus your orator was deprived of the interest he had purchased in said property, and the Consideration for which said note was given, and upon which Judgment had been Confessed, utterly failed, and he is advised that he ought not to be Compelled to pay



for that which he did not obtain, and that a court of equity will grant him relief.

The said A. L. Russell, duly paid your orator \$27.71 <sup>on his purchase,</sup> Jan'y 28th 1893, and he has been deprived, like your orator, of what he purchased.

When said judgment was confessed, by your orator & said Martin to same costs, it was agreed, and the judgment so states, that execution was to be stayed until March 15th 1893, but notwithstanding this agreement an execution was issued on said judgment the next day. A copy of said judgment & execution are herewith filed marked respectively "A & B".

Your orator avers that said judgment is now unjust, the consideration for which the note was executed, upon which said judgment was confessed, having failed.

For as much then as your orator is remediless, save in a court of equity, he prays that the said M. L. Slump Admr. of the estate of Ezekiel L Lunsford deceased, may be made a party defendant to this bill and required to answer the same, but not on oath, that being expressly waived; that he, his agents, attorneys at law, and all others, be perpetually enjoined and restrained from proceeding to enforce said judgment, or levying said execution; that proper process issue, and all proper orders be made



that the said Judgment be perpetually enjoined  
and that all such other further and general  
relief may be afforded your orator as in the  
premises may be just and right. And your  
orator will ever pray &c.

James W Orr. P. S.

State of Virginia  
County of Lee } ss.

I J. A. G. Hyatt Clerk of the Circuit Court of said  
County, hereby certify that Alexander Clifton  
personally appeared before me, in my County  
aforesaid, and made oath that the allegations  
contained in the foregoing bill, which he makes  
of his own knowledge are true, and that all  
other matters therein stated he believes to be true,  
Given under my hand this 7 day of March 1893.

J. A. G. Hyatt clerk.



Alexander Clifton  
vs Bill-Injunction  
3

M. L. Slomp Admr &c

1893. 1<sup>st</sup> May Rules Bill.  
filed Spd Ld & L. Chm

" 2<sup>nd</sup> May Rules Bk. con  
and cause set for hearing

" March Decree & Contd

" June Continued

" Nov. Decree final

O.B. 550-1

H. C 7.43

M. C 2.14

S 50

A 15.00

Depo 4.25 3.25 p  
Co C 2.50 1.00 p  
Co C 2.50

Co C 2.50

~~32.12~~



To the Hon H.S. K. Morrison Judge  
of the Circuit Court for the Co. Vt.

The answer of M. R. Slump  
admr. to a bill of Complaint filed  
against him in this Honorable Court  
by Alex. Califton

For Answer to said bill or to  
so much thereof as he is advised  
that it is material for him to an-  
swer, answering he says:

That it is true, that ~~that~~ the  
Brick Co. sold to the parties mention-  
ed in said bill a certain saw mill,  
engines Fixtures &c at the price of  
\$1736<sup>00</sup>/<sub>100</sub> and to secure the purchase  
price therefor took and had regis-  
tered the two deeds of trust ~~of~~  
mentioned in pliffs. said bill; that  
Ezekiel L. Lumsford one of the pur-  
chasers of said mill &c departed  
this life intestate; that your  
respondent afterwards to wit  
on the day of 1891 was  
duly appointed and qualified  
as the admr. of the estate of said  
Lumsford; that on the 23<sup>rd</sup> day of  
June 1891, your respondent  
sold to W.H. Martin at a pub-  
lic sale said Lumsford's interest  
in said mill &c on 12 months time  
for the sum of \$305<sup>00</sup>; that ~~that~~  
your respondent took the note of



\* that the plaintiff sold to Mr. Russell his interest in said  
mill for the price of \$275.00 with the understanding  
that Mr. Russell was to assign to said plaintiff  
the same subject to said trust.

said plaintiff as principal & J. H.  
Martin as surety for said \$300<sup>00</sup>  
That this is the note on which  
said plaintiff confessed judgment.  
Your respondent does not de-  
ny that at the time said inter-  
est in said mill was sold that  
he sold without announcing  
that a deed of trust was on the  
mill, nor does he admit no  
announcement was made con-  
cerning the matter for he does  
not remember about it dis-  
tinctly; but he does know that  
the fact that a deed of trust  
was on it, was generally known  
in the country and that fact  
was known to said J. H. Mar-  
tin the purchaser of the same.  
Your respondent denies that he  
warranted the title to the same;  
he only intended to sell said Lin-  
coln's 1/5 interest in said mill &  
let it be incumbered or un-  
incumbered. Your respondent is  
advised and informed that  
<sup>plaintiff's</sup> purchaser (Mr. Russell) has  
paid him on said mill the  
sum of \$ in addition to the  
amount which said plaintiff says  
was paid him on Jan 28<sup>th</sup> 1893. \*

Your respondent denies the prin-



2 Savers  
Rights &c  
§ 939

cipal flaws claimed by the plain-  
tiff that the purchase made  
by him in the manner set out  
in his bill, implies a warranty of  
title free from all incumbrances;  
but on the contrary he is informed  
that a public sale made by an  
administrator of his decedent's  
effects rests on the same principles  
as that of judicial sales, - that the prin-  
ciple of caveat emptor applies.  
and more especially when the  
purchaser, <sup>whether</sup> for himself or as an agent  
or for another, knew at the time of  
his purchase that there were out-  
standing liens on the subject pur-  
chased. Your respondent de-  
nys that the consideration of  
said note has <sup>wholly</sup> failed because as  
before stated plaintiff has rec'd. a  
large part of the amount <sup>the amount</sup> of for  
which he sold said mill &c and still  
holds said Russells note for the  
which he can collect if Mr. Russell is <sup>not</sup> ~~not~~ <sup>indebted</sup> ~~indebted~~  
respondent, and also ~~that~~ he had the  
use and occupation, benefits and  
profits & enjoyment and possession  
of the same for quite a while before  
it was sold under said deed of  
trust. Your respondent is in-  
formed and advised that W. H.  
Martin should have been made  
a party ~~defendant~~ to this suit, and



in that respect said plaintiffs be  
should be amended.

Your respondent says that it is  
perhaps true that an execution  
issued at the time mentioned in  
said bill; but the same was issued  
without the direction of your re-  
spondent or his attys. - the same  
was not ever delivered to the  
sheriff for execution.

Now having fully answered as  
fully as he is advised that it is  
material for him to answer,  
he prays to be hence dismissed  
with his costs in this behalf ex-  
pended. And he will ever pray &c.

M. L. Slump by  
Perrington & Lewis  
p. d.

Virginia Lee Co. to wit -

M. L. Slump, this day personally  
appeared before me and made oath in  
due form that the statements made in this  
answer so far as they depend on his own  
knowledge are true & so far as made upon  
information derived from others, he believes them  
to be true.

J. A. S. Stratt clerk

M. L. Slump

advs. answer

Alex. C. C. C.

Filed in open court  
by leave thereof, Repli-  
by Defts. Agt. 8/1893.  
J. A. S. Stratt



Alexander Clifton

Plaintiff

against

M. L. Slough Adams &c

Defendants

In Chancery.

This cause came on to be heard upon the bill of the plaintiff and exhibits therewith, the answer of the defendant with replication thereto, the depositions of witnesses and was argued by Counsel. On consideration thereof it is adjudged, ordered and decreed that the injunction heretofore granted in this cause restraining the defendant, and all others from proceeding to levy the execution or collect the judgment in the bill mentioned, be and the same is hereby perpetuated, but as to the credits endorsed and mentioned in said judgment the plaintiff is not to be reimbursed therefor, And it is further adjudged & decreed that the plaintiff recover against the defendant as administrator of the estate of Ezekiel Lumsford deceased, the costs of this suit. And the cause is stricken from the docket.



Perquimans

At a Circuit Court - Continued

Alexander Clifton  
vs { Decree Final  
      {  
Mr. L. Slough Admr.

Entered in C. O. B. p 550  
+ 551. This Nov. 18, '93.  
J. A. G. Hyatt  
Deputy Clerk

Costs - \$33.62, Exp. Paid  
Shams satisfied.  
Jany 27<sup>th</sup> 1894.  
Page 50. Chy.

Enter this Decree.  
H. L. K. M.  
Nov 18<sup>th</sup> 1893.



Alexander Clifton

against

M. L. Slomp Adm<sup>r</sup> of Ezekiel Linsford dec<sup>d</sup> Def<sup>t</sup>

Plff  
In ch<sup>y</sup>

On Motion of the Plaintiff, who presented his bill sworn to according to law, an injunction is granted restraining the defendant, and all others, from proceeding to levy the execution or collect the judgment in the bill mentioned, until the future order of the Court. But the Plaintiff to entitle himself to the benefit of this order is required to execute bond before the Clerk of this Court in the penalty of \$700<sup>00</sup> Conditional according to law.



Wm Clifton

Order.

Wm Clifton

Entered Chy  
O B 1440 March  
C 7893. Hyatt

Enter this order.

W. S. K. 1111

Mar 8th 1893.



W. N. Martin

The depositions of ~~Alexander Clifton~~  
J. H. Fleenor & H. W. Patriek  
taken by agreement at the law  
office of James W Orr in the town  
of Jonesville Va, on the 1st day of  
June 1893, to be read as evidence in  
the Chancery Cause of said Clifton  
against M. L. Slomp ~~Slomp~~ & pend-  
ing in the Circuit Court of Lee County  
Va. Present Plffs & Defts Counsel.

Wm H Martin a witness of lawful  
age and being first duly sworn  
deposes and says -

Ques' by plaintiff's Counsel.

Please state whether or not you at  
any time purchased a saw mill,  
engine and fixtures, or interest therein,  
at a sale by defendant, and if so  
at what price and for whom did  
you purchase?

Ans.

I <sup>def</sup> purchased a  $\frac{1}{3}$  interest, at the  
price of \$305<sup>00</sup>. This purchase  
was made from M. L. Slomp, Adm.  
of the estate of Ezekiel Linsford,  
at a public sale by said Adm.  
on the 23 day of June 1891, and  
said purchase was made at  
highest bidder <sup>at public outcry</sup> ~~at public auction~~  
I made the purchase for the plaintiff,



Alex Clifton, and he and I executed our note therefor, I being security.

Ques

Please state whether, <sup>or</sup> not the <sup>said</sup> ~~Adm~~ at said sale made any announcement that the sale of said interest was subject to a lien upon said property or that the purchaser would purchase subject <sup>to</sup> a lien thereon for purchase money then unpaid, and what if anything was said in regard thereto?

2 Ans.

There was nothing said about there being a lien on said mill at the sale, nor that the purchaser would take the property at his own risk or subject to a lien.

Ques

Did you offer your bid of \$305-00 expecting that Mr Clifton would receive a one fifth interest in said Saw Mill, Engine & fixtures free from encumbrance?

Ans.

Yes Sir, I did.

Ques

Did you consider \$305-, on 12 Mos- time, a fair price for said interest?

Ans.

I did.

Ques

What was the original purchase price of said property?

Ans

Something over \$1700- about \$1735-



Ques

Were you present at the sale of said property by J. R. McDermott Trustee, and if so for what sum was it sold and when was it?

Ans.

I was ~~present~~<sup>was</sup> when it was sold, which Feb. 29 1893, and said mill sold for \$500, as I was informed at the time, though I did not hear the bid or the announcement at the time.

Ques

Did Mr Clefton & the other owners have to purchase any repairs for said mill soon after said purchase and if so what & at what price.

Ans.

They did; they purchased a saw, and my recollection is that  $\frac{1}{5}$  interest <sup>in it</sup> was about \$14.50, which made the price of the saw \$72.50.

I remember that they also purchased an emory wheel, but do not remember the price - There was also some express charges on the saw ~~and wheel~~ of between \$4 & \$5. These were bought soon after Mr. Clefton's purchase of his interest.

X Examined.

Ques.

Did you not know at the time you made the purchase at the sale, that Dunley, Lunsford & Co



had executed a Deed of Trust to secure the ~~satisfaction~~ payment of said purchase price.

Ans.

I did see their land, or was so informed, but knew nothing of any lien on <sup>- they will</sup> State - whether or not you had ever seen said deed of trust.

Ques.

Ans.

I can not state that I had, but my impression is that I saw the one J. B. Shirley & wife executed.

Ques.

Did ~~you~~ not the Deed of Trust you ~~did~~ <sup>saw</sup> see cover said saw mill &c?

Ans.

I don't think it did, or at least I don't remember it if it did.

Ques.

Did you make any enquiries, or examine the records in the County Court clerk's office to ascertain whether or not said property was free from encumbrances?

Ans.

I did not.

Ques.

How long did said Clifton run said mill after he purchased ~~it~~ <sup>that</sup> said interest?

Ans.

My impression is that he kept his interest about 6 Mos., but <sup>that</sup> it was not operated more than 3 Mos.

Ques.

Do you know whether or not he received any thing as the proceeds



from said mill for the time he run the same?

Ans.  
Ques.

I do not.

Do you not know that he received certain money from C. E. Flanary and others as the proceeds of said mill for the time he run the same?

Ans.  
Ques.

I do not.

To whom did <sup>said</sup> Clifton sell his interest ~~and for~~ in said mill and for what price?

Ans.  
Ques.

He sold to A. L. Russell for \$275- State if you know, whether said Clifton has ever received anything on said sale to said Russell, or have you ever heard said Clifton say that he had received anything?

Ans.

I do not know, nor have I heard him say that he had received anything.

Ques.

How long was it from the time that Clifton purchased said  $\frac{1}{2}$ -interest in said mill up to the time that said mill was sold by J. R. McDowell, Trustee? or

Ans.

One year and 8 mos. nearly.

Ques.

Has not said Clifton or his assignees receiving a compensation on



on a remuneration from said mill during this one year & 8 mos.?

Ans.

I do not know.

Ques.

Do you know whether or not said mill was being run ~~or not~~ during said period?

Ans.

Said mill was run some, but I do not know how much.

Ques.

Did you and said Clifton not come in and confess judgment on the note from you and him to said M. L. Slomp, Admr., &c., and had you not learned of the existence of the Deed of <sup>in</sup> Trust on said mill prior to said confession?

Ans.

Yes sir; we did; but we did so, or I did so, believing that if said mill was sold we would get credit on our note for  $\$$  of what ~~the~~ said mill brought at said sale.

Ques.

Do you know whether or not the assignee (Russell) has ever resisted the payment of said note to Clifton, and do you know that said Clifton could not collect said note if he should try?

Ans.

I do not know.

And further this deponent saith not.

W. H. Martin



Ques

J. H. Fleenor another witness  
of lawful age being duly  
sworn deposes as follows.

Were you present at the sale by defendant  
M. L. Slump Adm'r to Alexander Clifton  
and if so state anything you may know  
about said sale?

Answer. I was present at said sale  
with my son-in-law Henry Patrick  
who was talking about bidding  
for the mill and did bid  
on it. I was going in with  
him if he purchased the same.  
The said Adm'r proposed to  
sell a  $\frac{1}{5}$  interest in said  
property. and said nothing about  
any lien. deed of trust or any  
incumbrance of any kind. Said  
Patrick did bid but Alex Clifton  
became the purchaser. I knew  
nothing of any deed of trust  
or lien on the said property  
but had heard in the neighborhood  
that the parties had given a  
deed of trust on their land  
to secure the payment of the  
mill property.

And further this deponent soith not.

J. H. Fleenor

witness  
claims

1 day, 50 cts



Henry W. Patrick another witness  
of lawful age being duly  
Sworn deposes and says,  
I was present at the sale of  
the mill property - I went there  
with the intention of buying  
the property - and run it up  
to Three Hundred dollars. There  
was nothing said by the  
Admrs who sold the property  
about any lien, or incumbrance  
of any kind being on the property  
and I knew nothing of any  
incumbrance or lien being on  
it, and if I had known that  
there was a lien for purchase  
money on the property, I would  
not have bid upon it, the  
Admr proposed and did sell a  
1/5 interest for \$305.<sup>00</sup> which  
I consider a fair price for  
it, free from incumbrance,  
And further this deponent soith out.

witness  
Claims  
1 day .50 cts.

H. W. Patrick

Virginia Lee County Court,  
J. Henry C. Goslyn a Justice of  
the Peace for the County of Lee



and State of Virginia, do Certify  
that the foregoing depositions  
of W. H. Martin J. H. Fleenor  
and H. W. Patrick were duly  
taken, sworn to and subscribed  
before me at the time and  
place <sup>and for the purpose</sup> mentioned in the Caption  
of the same.

Given under my hand this  
1<sup>st</sup> day of June 1893.

H. C. Foslyn J. P.



Alx Clifton

vs  $\frac{5}{3}$  Depos

M. L. Slough Admr.

Recd from Justice  
before whom taken  
and filed June 2<sup>d</sup> 1893  
J. A. Hyatt C

J. P. Free 75  
J. H. Freeman 50  
H. W. Patrick 50

175  
250  
425



(1)

The depositions of Alexander Clifton and A. L. Russell taken at the law office of James W Orr in Jonesville Virginia, Sept 14th 1893 by agreement of parties, which are to be read as evidence in a Chancery Cause pending in the Circuit Court of Lee County Virginia in which said Clifton is plaintiff and M. L. Slomp Schurr &c is defendant. Present Counsel for Plff and Deft.

The said Alexander Clifton a witness of lawful age and being duly sworn, deposes & says.

Ques

Were you present at the sale by M. L. Slomp Schurr of Ezekeiel Lunsford decd, of the interest in a saw mill, engine, fixtures &c of which you became the purchaser, and if so where was it?

Ans

I was not present right at the time, but was there a few minutes after they were bid off. The sale was at W. H. Martins where the mill was stationed and being run by M. L. Slomp as admr of E. Lunsford. Doro Lunsford and Ball Brothers.

W. H. Martin bid the 1/5 interest of Lunsfords estate for me, and we executed our notes at W. H. Martins residence for \$305.00 for



Ques

Said interest,

Had you any knowledge at the time of said purchase that there was any lien on said property for unpaid purchase money?

Answer

I had no knowledge of any lien whatever being upon the property.

Ques

Did the Admr at the time of the execution of said note, or before, inform you that your said purchase was subject to a lien on said property for purchase money or anything else?

Ans

He did not;

Ques

What was your intention and what was your understanding of the nature and extent of your purchase?

Ans.

I understood that I was buying one full and complete interest in the said Saw Mill, Engine and fixtures, and gave what I considered a fair and full price, for said interest free from any incumbrance,

Ques

Then did you first learn that there was an encumbrance or lien on said property for purchase money?

Answer

Not until I had sold said interest to A. L. Russell, which sale was made January 6<sup>th</sup> 1892.



Ques

What did you sell to A. L. Russell, or in what manner did you sell?

Ans

I sold the same interest to Russell that I purchased, and in the same manner as I purchased it, and not with the understanding that Mr. Russell took it subject to a lien for purchase money.

Ques

What inducements, if any, were held out to you by the ~~plaintiff~~<sup>defendant</sup>, or his atty, or by Frick Co, or their atty to confess judgment on the \$305<sup>00</sup> note for said interest?

Answer

Mr. Goens, one of the attys told me that he could see nothing to hinder me from getting a good title to said interest, and what he said to me caused me to confess judgment as I did, together with the idea that I would save costs by so doing.

Ques

Has Mr. A. L. Russell paid you for said interest or any part thereof, and has he paid you anything since the sale of said property by McDowell Trustee, or does he refuse to pay?

Ans

He paid me twenty seven and 71/100 dollars on Jan 28<sup>th</sup> 1893, which he paid to the defendant and <sup>was</sup> credited on my note he



the defendant  
held against me for the purchase  
price of the mill &c. He has  
paid me nothing since the sale  
by Mr. Dowell trustee, and refuses  
to pay anything more, and says  
he thinks he ought not to pay  
any more as he has been deprived  
of the property.

Ques

For what price did you sell the interest  
you had purchased to Mr Russell?

Ans

Mr Russell was to pay me  
\$275.00 for the interest I had in  
the mill, and to come due  
June 20<sup>th</sup> 1892.

Ques

Have you paid defendant any other sum  
or sums on your note other than  
the \$27.71 alone referred to?

Ans

Yes I paid him \$10.00 Sept 19<sup>th</sup>  
1892, and \$5.00 Dec 19<sup>th</sup> 1892.

### X. Examination -

Ques.

Was not W. H. Martin, your agent,  
in the purchase of said saw-mill,  
one of the securities on one of the  
notes for the purchase price of  
said saw-mill from Frick Co.

Ans.

I do not know whether he was



or not

Ques. Did you not know at the time you bought said mill &c. that it was covered by a deed of trust?

Ans. I did not.

Ques. How did you first find out that there was a lien on said mill &c?

Ans. I Cannot tell exactly how;

Ques. How is it that you can tell that the Admr. did not notify you that there was a lien on said mill &c. when you cannot tell how you did find out that there was a lien on it?

Ans. One was of importance to me and the other is not.

Ques. Which one do you consider was of importance to you?

Ans. The fact that the Admr. did not notify me about the lien is the one I consider of importance.

Ques. Can you tell when <sup>where</sup> it was that you first learned of this lien?

Ans. I Cannot tell.

Ques. If you cannot tell how you obtained this information, where it was, or when it was, how can



you say it was after you sold  
to Russell?

Answer I know it was after I sold to  
Russell.

Ques. Do you not live in the immediate  
community of ~~these~~ the parties who  
bought this mill &c. from the Frick  
Co. and do you not know they  
bought said mill on time?

Ans. I live about one & one half miles  
from the Brimley's who owned a  
part in the mill, and 8 or 9 miles  
from the Lumsfords & Balls, who  
owned some in the mill, I heard  
it talked that the Brimley's had to  
go to town to fix up a deed  
of trust on their land, to secure  
a payment on the mill.

Ques. Before you purchased said mill  
&c. did you make any enquiries  
or examine the records to as-  
certain whether there was any  
lien on ~~said mill &c.~~ <sup>the same?</sup>?

Ans. I did not. I never thought of  
any lien being on the mill.

Ques. How long was it from the time  
that you purchased said mill &c.



up to the time it was sold by  
Mr. McDowell trustee &c.?

Ans. It was about one year and  
8 months.

Ques. Was not said mill &c. being run  
during this time?

Ans. It was run some of the time,  
but most of the time it was  
standing idle.

Ques. Has not you ~~and~~ your assignees  
receiving the proceeds of said  
mill &c. during the time it was being  
run?

Ans. The mill made nothing above  
expenses, and consequently I got  
nothing more than I spent.

Ques. Do you know how many 1000 ft  
of lumber was sawed by said mill  
&c. while you owned it?

Ans. I cannot tell, exactly how much  
was sawed - but I received as  
my part while the mill was  
run, after I bought it, until  
I sold it \$133.<sup>00</sup> we got \$35.<sup>00</sup>  
per thousand for sawing - and I  
owned  $\frac{1}{5}$  of the mill.

Ques. Have you ever tried to collect said  
note off of A. L. Russell further



than the \$27.71 payment?

Ans. I have not. I did not consider it just as the mill was sold from him, as well as from me.

Ques. Do you know that Russell did not receive full value for said mill &c?

Answer. I only know what Mr Russell told me, and that was that he held a note on the Brinleys, but had received nothing on it.

Ques. You speak of certain inducements held out to you by Mr. Goins that caused you to confess judgment on your note to Slump, Adams, will you detail here the words used by him on that occasion?

Ans. Mr Goins told me two or three times, that he could not see any reason why I could not get a good title to <sup>1/5 of</sup> the mill

Ques. Did not Mr. Goins tell you that if said mill &c, were sold that after satisfying said deed of trust that the over-plus if any would be divided among the owners accord-



ing to their several interests?

Ans I don't remember that he told me that.

In chief

Ques You say on cross examination that you received \$133<sup>00</sup> proceeds from mill. Was this over and above expenses or subject to expenses?

Ans <sup>This does</sup> Subject to expenses, and after payment of expenses there was nothing left.

Ques Did you incur any expenses for repairs after your purchase, and if so when and how much?

Ans We purchased a new saw, and my part for it <sup>was</sup> \$17.50 also an iron wheel was about 75 cents.  
~~Ques~~

And further this deponent soith not.  
Alex. Clifton

A. B. Russell another witness of lawful age being duly sworn deposes as follows

Ques Did you purchase an interest in a saw mill, engine & fixtures from Alex Clifton, and if so for what price and what interest did you buy?

Ans I did purchase from Alex Clifton a 1/5 interest in a saw mill & engine & fixtures. For the price



of \$275.<sup>00</sup>

Ques

Did you know at the time of said purchase that there was a lien on said property for purchase money in favor of Trick Co?

Ans

I am not positive whether I knew about it or not. There was nothing said about it at the time we made the trade.

Ques

Was it or not the understanding between you & Mr Clifton that your purchase was subject to a lien on said property for purchase money?

Ans.

He said nothing about a lien to Trick Co, but said any money I would pay M. L. Slomp Adams he would credit on my note, as he had bought the interest from Slomp and owed him for it, and I did pay Mr Slomp \$275 on Mr Clifton's note; and this is all I have ever paid Mr Clifton on the purchase.

Ques

Was or not the amount you agreed to pay for said interest a fair price for the same free from incumbrance?

Ans

I consider it a full and fair price for the Mill. Engine &c



Without any ~~etc~~ lien or  
incumbrance whatever,

X-Examination-

Ques. ~~State in full~~ To whom did  
you sell the  $\frac{1}{5}$ -interest in said  
mill, if you did sell it; after  
you purchased from Clifton?

Ans. I sold it to Dow Lunsford, Bishop  
Lainley, Robert Lainley & Silas Griffin

Ques. State in full your contract with  
them, what and how they were  
to pay you for ~~same~~ said  
interest?

Ans. They were to pay the Company  
for the entire mill, and pay  
me back what I had paid  
them on the other shares, so  
after I purchased from Mr Clifton  
I bought all the rest out, the  
amt which I had paid ~~was~~ on  
the other shares was \$124.<sup>00</sup> but  
the Lainleys Griffin &c. have never  
paid the amount paid out by  
me on any other sum ~~on the~~  
that I know of. The mill  
was sold by McDowell  
Trustee at public auction  
and brought \$500.<sup>00</sup> and



and I understood there was  
\$1000<sup>00</sup> then due on the purchase  
price of said mill &c.  
And further this deponent with wit,  
A. L. Russell

Virginia Lee County To-wit:  
I. Henry C. Foslyn a Justice of the  
Peace for the said County. do hereby  
Certify, that the foregoing depositions  
of Alex Clifton and A. L. Russell  
were duly taken, sworn to and  
subscribed before me, at the time  
and place mentioned in the Caption  
of the same.

Given under my hand, this  
14<sup>th</sup> day of September 1893.  
Henry C. Foslyn J.P.



Alex Clifton Plff  
vs.  
M. L. Stemp Adm Deft  
In Chancery

---

The depositions  
of Alex Clifton &  
A. L. Russell

---

Filed Sept the 15th/1893  
A B Munsey  
clerk

J. P. Fee \$2.<sup>50</sup>



The depositions of M. L. Slump  
taken before me H. C. Joslyn  
a Justice of the Peace for the County of  
San and State of Vt., pursuant to ~~the~~  
~~the Court's order~~ Agreement of  
the parties to be read as evidence  
in behalf of M. L. Slump in a  
certain ~~the~~ suit in equity de-  
pending in the Circuit Court  
of San County wherein Alex.  
Califton is ~~the~~ plaintiff and  
David Slump is plaintiff.

Present A. M. Goins atty for Deft  
J. H. Orr for plff.

The witness M. L. Slump being  
duly sworn deposes as follows:

1 ques. Are you the Admin. of the estate  
of Elizabeth Sumner & David -?  
Ans I am.

ques 2 As such Admin. did you  
take possession of and sell  
a 1/5 interest of said Sumner  
in a certain sawmill, Ensign  
etc.

Ans. I did.

ques 3 State when & how you  
<sup>interest in said</sup> sold said mill etc.?

Ans. I think I sold in June  
1891. I sold at Public auction



on twelve months time to  
the highest and best bidder,  
and William Martin bid the  
1/5 interest off. but after a  
little Caucussing Mr Alexander  
Clifton executed his note to  
me for the purchase price  
\$305.<sup>00</sup> and gave me William  
Martin as his security.

~~Examinined.~~

Sworn

And further this deponent soth not,  
M. L. Glenn

Virginia Lee County To-wit:  
J. Henry C. Joslyn a Justice of the  
Peace for said County, do hereby  
Certify. that the foregoing deposition  
of M. L. Glenn. was duly taken  
Sworn to and subscribed before  
me, at the time and place mentioned  
in the Caption of the same.  
Given under my hand This 19<sup>th</sup>  
day of Oct 1893.

H. C. Joslyn J. P.



Alfred Clifton  
vs B Du Equity  
Mr. L. Slump

The deposition  
of Mr. L. Slump

Filed Oct. 20/87  
J. A. Hyatt

J. P. Free 75-



\$ 305.00

Jonesville Va June 23<sup>rd</sup> 1891

Twelve months after date we promise  
to pay to M. L. Slump Admr of Ezekiel L.  
Lunsford decd, the full and just sum  
of Three hundred and five Dollars  
it being for one fifth interest in a steam  
saw mill, value received, waiving  
all homestead Exemption laws as to this  
debt. Witness hand and seal.

Done June 23<sup>rd</sup> 1892

A. Clifton Decd

W. H. Martin Decd

A Copy

Teste J. A. Stizatt & Co.



Lee County Circuit Court

J. A. G. HYATT,

CLERK.

Jonesville, Va., ..... 189

Hyatt

J



1 Virginia:

2 In the Clerk's Office of the  
3 Circuit Court of Lee County at the Court  
4 house thereof, January 30th 1893.  
5 M. L. Sleep Advers of Ezekiel Sleep's Est. vs.  
6 against J. D. Bell  
7 Alex. Clifton and Wm Martin Defts.

8 This day came the plaintiff by his  
9 attorney, and Alexander Clifton & W. H.  
10 Martin appeared in their own proper  
11 persons, who thereupon confessed  
12 judgment against themselves in  
13 favor of the plaintiff for \$305<sup>00</sup>  
14 the debt in the declaration mentioned  
15 on bond receiving homestead & legal  
16 interest thereon from June 23<sup>rd</sup> 1892 till paid  
17 and the costs, subject to a credit of \$10<sup>00</sup>  
18 paid Sept 19<sup>th</sup> 1892; \$5<sup>00</sup> December 19<sup>th</sup>  
19 1892 & \$27<sup>71</sup> paid January 28<sup>th</sup> 1893, with  
20 stay of execution till March 15<sup>th</sup> 1893.

21 It is therefore considered that the plaintiff  
22 recovers against the defendants said  
23 sum of \$305<sup>00</sup> and legal interest  
24 thereon from June 23<sup>rd</sup> 1892 till paid  
25 and the costs, subject to a credit of  
26 \$10<sup>00</sup> paid Sept 19<sup>th</sup> 1892; \$5<sup>00</sup> paid  
27 December 19<sup>th</sup> 1892 & \$27<sup>71</sup> paid  
28 January 28<sup>th</sup> 1893. Stay of Execution  
29 till March 15<sup>th</sup> 1893.

30 Just. J. A. Hyatt, Clerk

31 A copy

32 Just. J. A. Hyatt, C. C.



W. L. Slump, Adm'r & Co

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Copy of J. J. J.

My children it is

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# The Commonwealth of Virginia,

## To the Sheriff of Lee County--Greeting:

We Command You, That of the Goods and Chattels of Aly. Clifton and W. H. Martin

late in your Bailiwick, you cause to be made \$ 305<sup>00</sup>, with legal interest thereon from the 23 day of June, 1892, till payment, which M. L. Slump, Adm'r & C.

lately in our Circuit Court of Lee County, has recovered against them by suit for Debt. Also, \$ 7.76, which to the said Slump, Adm'r & C.

in our Court were adjudge for his costs in that behalf expended, whereof the said Aly. Clifton & W. H. Martin

are convicted, as appears to us of record. And that you have the same before the Judge of our said Court at the Court House on the first Monday in April, 1893 next, to render to the said Slump, Adm'r & C. of the Debt and costs as aforesaid. And have then and there this Writ.

Witness, J. A. G. HYATT, Clerk of our said Court, at the Court House, this 28th day of July, 1893 in the 107 year of the Commonwealth.

J. A. G. Hyatt Clerk.



M. L. Sleep, Adms

vs  $\frac{7i}{7a}$

Key-Whiston sk ab

Apr. Rules 1893.

"G"

See.  $\frac{100}{100}$  19-- 1892  
"  $\frac{15}{15}$  19-- 1892  
"  $\frac{27}{27}$  19-- 1893



This Deed made this January  
20<sup>th</sup> 1891 by and between Ezekiel  
Lunsford and Malinda Luns-  
ford his wife Silas Griffin and  
Bell Griffin his wife J. B. Linn-  
ly and Priscilla Linnly his  
wife Caleb Linnly and Nancy  
Linnly his wife parties of the  
first part and J. R. McDowell  
Trustee party of the second  
part witnesseth that whereas  
the parties of the second part  
are jointly indebted to "Frick  
Company" in the sum of Seven-  
teen hundred & thirty-six dollars  
Three hundred dollars of  
which is to be paid ninety days  
from this date \$478.66 $\frac{2}{3}$  of  
which is to be paid in six  
months four hundred and seventy  
eight 66 $\frac{2}{3}$  which is to be paid  
in twelve months and the  
residue in 18 months from this  
date - all to bear interest from  
this date and evidenced by  
negotiable notes bearing even  
date with this instrument.  
Now therefore in consideration  
of the premises as well as the



sum of one dollar to the parties  
of the second part in hand  
said the receipt whereof is  
hereby acknowledged the  
parties of the second part  
doth grant bargain sell and  
convey unto the party of the  
first part all the lands owned  
by them or either of them sit-  
uated in Lee County Virginia,  
whenever they reside or have  
title to and for a more particu-  
lar description of which refer-  
ence is here made to the deed  
and title papers of the parties  
of the second part now of  
record in the clerks office of the  
County Court of Lee County -  
and the parties of the second  
part also convey in trust at  
aforesaid a Frick Company  
20 H P Portable engine com-  
plete No 5089 and a Frick  
Company No 2 saw mill com-  
plete with the saw and all its  
fixturs thereto belonging No 1329  
and Top saw rigging all in Trust  
to secure the debts first herein  
set forth;



And should the parties of the second part pay and discharge the notes following due as aforesaid at the times her in specified with the interest as herein stated then this obligation to be null and void otherwise remain in full force and virtue. And the trustee shall on the failure of the payments aforesaid or either of them advertize for a period of 20 days said property by posting notice of the times & place of sale and then proceed to sell at the front door of the Court house of said County or on the premises so much of said property herein conveyed as will pay the amt then due. The sale will be made for cash in hand. And the said trustee will proceed in their way until the whole of said debts are paid or the property sold. He will sell first such property as the parties of the second part may by written request



signed by them designate, but  
if they fail so to direct them  
such as in his judgment  
will best serve to carry out the  
provisions of this trust.

Witness the following signa-  
tures and seal this the day  
and year first above written.  
And as to their debt we each  
waive the benefit of our  
homestead exemptions.

Attest as to first

Czerrial <sup>his</sup> X Lumsford seal

J. B. <sup>his</sup> X Lively seal

M. L. <sup>mark</sup> X Lumsford seal

Silas Griffin seal

R. A. Lively seal

Caleb Lively seal

And

Periscilla <sup>her</sup> X Lively seal

Malinda <sup>mark</sup> X Lumsford seal

Bell <sup>mark</sup> X Griffin seal

Nancy <sup>her</sup> X Lively seal

<sup>mark</sup>

Virginia Lee County to wit:

I John

B. West a Notary Public for  
said county in the State



aforesaid do certify that Eze-  
riel Lunsford and Malinda  
Lunsford his wife Silas Griffin  
and Bell Griffin his wife  
J.B. Lively and Priscilla  
Lively his wife and Caleb  
Lively and Nancy Lively his  
wife whose names are signed  
to the foregoing Deed of Trust  
bearing date January 20<sup>th</sup> 1891  
have acknowledged the same  
before me in my said county  
Given under my hand this  
21<sup>st</sup> day of January 1891  
John S. West N.P.

Virginia, Lee County to wit:

In the  
office of the clerk of the said  
County the 22<sup>nd</sup> day of January  
1891 this Deed was presented  
and together with the certif-  
icate thereto annexed, admitted  
to record.

Teste: John T. Gibson, clerk



Lincoln et al

to

J. R. McDowell

Deer Brook 26 P. 374 75

6000



# Defendants' Brief.

Alex. Clifton

vs.

M. L. Slump.

} In Chancery.

See Amer. + Eng. Ency of Law.

Vol. 10, p 111, + note 2.

2 Vol. Lawson's Rights + Rem. § 939.

There is a difference in the case of  
vendor selling property as his own  
and selling in a representative  
capacity as to implied warranty.

See Implied Warranty of Title —

Vol. 10, Amer. + Eng. Ency. of Law, p 1174c

Judicial Sales —

~~Vol. Amer. + Eng. Ency of Law p~~

The personal representative sells  
only such title as was in the de-  
cedent, and the purchaser takes  
the title at his own risk, and will  
not be discharged from payment  
if it prove defective.

Vol. 7, Am. + Eng. Ency. of Law p 296  
and notes.



Depts

Alex Clifton

vs } References.

W. L. Slump



KNOW ALL MEN BY THESE PRESENTS, That we *Alexander Clifton and E. W. Drumington and Alex. McNeil Jr.* are held and firmly bound unto the Commonwealth of Virginia, in the sum of *Seven Hundred*

*Seven* dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, hereby waiving the benefit of our homestead exemptions as to this obligation, and any claim, right, or privilege to discharge any liability arising under this bond, or by virtue of said office or trust, in any currency, funds, counter claims or offsets other than legal-tender currency of United States. Sealed with our seals, and dated *13<sup>th</sup>* day of *March*, one thousand eight hundred and *ninety three*

The Condition of The Above Obligation is Such, That whereas the above bound

*Alexander Clifton*  
on *his* bill in Chancery against *M. L. Sluagh*  
*Administrator of Ezekiel Lunsford*

addressed to the Judge of the circuit court of the county of Lee, has obtained from the said Judge an injunction to injoin and restrain *the said M. L. Sluagh as such Admr and all other persons from proceeding to levy or collect the execution or judgment in the Bill & proceedings mentioned*

until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding the said injunction, that the plaintiff shall not have the benefit thereof until

*he*, or some one for *him*, shall enter into a bond, with good security, in the clerk's of of the said court, payable to the Commonwealth of Virginia, in the penalty of *Seven Hundred &*

Dollars, and conditioned to pay all such costs as may be awarded against the said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now, therefore, if the said *Alex. Clifton* shall pay all such costs as may be awarded against *him*, and all such damages as shall be incurred in case the said injunction be dissolved, then this obligation to be void, or else to remain in full force and virtue.

Executed in the presence of

*J. A. G. Hyatt C*

*Alex. Clifton* (SEAL.)

*E. W. Drumington* (SEAL.)

*A. McNeil Jr.* (SEAL.)

In the Clerk's Office of the Circuit Court of the County of Lee

This day personally appeared before me *J. A. G. Hyatt*, clerk of the circuit court of the county of Lee *E. W. Drumington & A. McNeil Jr* and made oath that *the house estate*, after the payment of all *their* just debts, and those for which he *they* are bound as security for others and expect to pay, are worth the sum of *at least one thousand* dollars, over and above exemptions allowed by law.

Given under my hand this *13<sup>th</sup>* day of *March* 1893.

Teste:

*J. A. G. Hyatt* Clerk.



Alex. Clifton  
vs  $\frac{3}{3}$  Duj. Bond

M. L. Stamp. Admte

Filed March 13 1893  
J. A. S. Hyatt



To Mr. L. Slump Admr. of the estate  
of <sup>Egghiel</sup> ~~Mr.~~ L. Lunsford deceased.

You will please take notice that  
on the 1st day of ~~May~~ <sup>June</sup> 1893, at the  
law office of James W Orr in the  
town of Jonesville Va, I will proceed  
to take the depositions of Wm H Martin  
& others which are intended to be  
read as evidence in my behalf in  
a certain suit in chancery now  
pending in the Circuit Court of Lee  
County Va, in which I am plaintiff  
and you are defendant. And  
if necessary will adjourn from  
day to day and from place to place  
until completed. Respectfully,

May 29<sup>th</sup> 1893.

Alexander Clifton.  
by Counsel.



Alex Clifton

vs { Notice

M. L. S. Schurte



# The Commonwealth of Virginia.

To The Sheriff of Lee County Greeting:

WE COMMAND YOU TO SUMMON .....

*M. L. Slough Administrator*  
*of the Estate of Ezekiel L. Lunsford deceased*

to appear at the Clerk's office of the Circuit Court of Lee County, at the Court House, on the first Monday in .....

*May* ..... next, being rule day to answer a bill in Chancery exhibited in our said Court against

*him* ..... by .....

*Alexander Clifton*

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse.

This *15<sup>th</sup>* day of *April* ..... 18*93*, in the 11*7* year of the Commonwealth.

*J. A. G. Hyatt* ..... Clerk,

A Copy Teste.....Clerk.



The Defendant and all others are  
enjoined and prohibited from  
collecting the Judgment in the  
Bill and proceedings mentioned  
until the further order of the  
Court, The J<sup>ty</sup> having given  
the bond required by the Sup<sup>re</sup>  
Court and  
J<sup>ty</sup> of the Court

(Orr)  
Alexander Clifton  
Esq  
333  
as 333 Chancery  
M. L. Sleep & Son  
Lo 1st May Bules 1890.

Examined Apr 18/93  
 by Delia King  
 True copy of the  
 within for the  
 Ch. L. Sloop at  
 9 1/2 O'clock A. M.  
 This Apr 18 - 1893  
 L. M. Wade D.S.  
 for C. E. Flannery  
 S. L. C.